

Questions and Answers – Undue Burden Independent Evaluator Hardship Waiver

Q1. What is the Undue Burden Independent Evaluator Hardship Waiver?

The Undue Burden Independent Evaluator Hardship Waiver (“Hardship Waiver” or “Waiver”) is a waiver from the requirement under Education Law §3012-d and the corresponding provisions of Subpart 30-3 that at least one observation/school visit be conducted by one or more impartial independent trained evaluators selected and trained by the district. Such waiver must be submitted annually on a form and in a manner prescribed by the Commissioner, commencing with the 2016-17 school year. Waivers will be granted to districts/BOCES who demonstrate that compliance with the independent evaluator requirement will pose an undue burden on the district/BOCES for at least one of the following reasons: compliance with the independent evaluator requirement would result in financial hardship; the district lacks professionally trained staff to comply with the independent evaluator requirement; the district has a large number of teachers; and/or compliance with the independent evaluator requirement could impact the safety and management of a building.

Approval of this Hardship Waiver by the Department will excuse, but not prohibit, a district/BOCES from conducting observations/school visits by impartial independent trained evaluators for educators who received an annual professional performance review (“APPR”) rating of Highly Effective, Effective, or Developing in the preceding school year (e.g., school districts would be excused, but not prohibited, from conducting observations/school visits by impartial independent trained evaluators for the 2016-17 school year for teachers/principals who receive an APPR rating of Highly Effective, Effective, or Developing for the 2015-16 school year; teachers/principals who, at a minimum, receive an APPR rating of Ineffective for the 2015-16 school year would continue to be subject to the requirement for at least one observation/school visit by an impartial independent trained evaluator for the 2016- 17 school year APPR process).

Please note: Educators who are not subject to the independent evaluator requirement pursuant to the Hardship Waiver must still receive a second observation/school visit. The second observation/school visit may be conducted by the building principal/supervisor or any individual selected and trained by the school district or BOCES. The two observations/school visits for such educators could be performed by the same individual.

Q2. What criteria make my district/BOCES eligible to apply for a Hardship Waiver?

Any district/BOCES may apply for a Hardship Waiver pursuant to this provision if they believe compliance with the independent evaluator requirement would create an undue burden on the school district/BOCES in one or more of the following areas:

1. compliance with the independent evaluator requirement would result in financial hardship to the district or BOCES;
2. the district or BOCES lacks professionally trained staff to comply with the independent evaluator requirement;
3. the district or BOCES has a large number of teachers and principals; and/or

4. compliance with the independent evaluator requirement could impact the safety and management of a building (i.e., due to the amount of time a principal is required to be outside of their building conducting observations as an independent observer).

Q3. How is the Undue Burden Independent Evaluator Hardship Waiver different from the Independent Evaluator Hardship Waiver that was authorized beginning in the 2015-2016 school year?

Subpart 30-3 of the Rules of the Board of Regents, as amended by the Board of Regents at its September 2015 meeting, previously provided for Independent Evaluator Hardship Waivers but only for rural school districts or school districts with only one registered school pursuant to §100.18 of the Commissioner's regulations that, due to the size and limited resources of the school district, were unable to obtain an independent evaluator within a reasonable proximity without an undue burden. In an effort to provide even greater flexibility to school districts and BOCES (particularly for large city school districts), the Board of Regents further amended Subpart 30-3 at its June 2016 meeting to provide an additional, separate Hardship Waiver from the independent evaluator requirement for those districts/BOCES who believe that compliance with such requirement will create an undue burden on the district/BOCES for one or more of the reasons stated above. Commencing with the 2016-17 school year, a district or BOCES may apply for this additional Hardship Waiver.

Rural and single building school districts may continue to apply for Independent Evaluator Hardship Waivers pursuant to the corresponding amendments to Subpart 30-3 adopted by the Board of Regents in September 2015 or for this new waiver depending on which waiver better meets their needs.

Q4. What is a district/BOCES required to submit as part of its Undue Burden Independent Evaluator Hardship Waiver Application?

As part of its Hardship Waiver application, a school district/BOCES must identify the ground(s) for seeking the Waiver and the group(s) of educators who will continue to receive at least one observation/school visit by an impartial independent trained evaluator. Please note, at a minimum, educators who received an overall composite rating of Ineffective in the prior school year must be observed by an independent trained evaluator.

For those educators who will not be subject to the Independent Evaluator requirement pursuant to an approved Hardship Waiver, districts/BOCES must submit a plan for conducting observations/school visits by the building principal/supervisor or any other individuals selected and trained by the district/BOCES ensuring that educators have at least two observations and that at least one of those observations is unannounced.

For all other educators in the school district/BOCES who must still receive a second observation/school visit by an impartial, independent trained evaluator (i.e., those who, at a minimum, receive an APPR rating of Ineffective in the preceding school year), the district/BOCES must submit a plan for conducting such observations/school visits if this information is different than the information provided in Tasks 4 and 9 of the approved §3012-d APPR plan. Once a Hardship Waiver is approved by the Department, it shall be considered part of the school district's APPR plan for such school year and any conflicting provisions found in Tasks 4 and 9 of the APPR plan will be superseded by the information contained in the Hardship Waiver application for any school year in which the Waiver is in effect.

Q5. My district/BOCES already has an approved APPR plan pursuant to Education Law §3012-d for the 2015-2016 school year. If we apply for and receive approval of a Hardship Waiver, must we continue to provide educators with at least one observation/school visit from an impartial trained independent evaluator during the 2015-2016 school year?

Yes. Subpart 30-3 of the Rules of the Board of Regents, as amended by the Board at its June 2016 meeting, provides that districts/BOCES may apply to the Department for a Hardship Waiver **commencing with the 2016-17 school year**. Therefore any school district/BOCES implementing an approved Education Law §3012-d APPR plan must implement only the approved plan during the 2015-16 school year.

Please note that the Undue Burden Independent Evaluator Hardship Waiver, once approved, is only effective during the school year for which it is approved. Districts/BOCES who wish to continue to operate under such a Hardship Waiver in future school years must submit an application by February 1st of each school year.

Q6. How does an approved Undue Burden Independent Evaluator Hardship Waiver affect the implementation of a district's/BOCES' approved APPR plan?

Hardship Waivers are approved on an annual basis. Once a Hardship Waiver is approved by the Department, it shall be considered part of the school district's/BOCES' APPR plan for the school year for which it is approved. Accordingly, where the terms of the Waiver are inconsistent with the approved §3012-d APPR plan, the information contained in the district's or BOCES' Hardship Waiver application will supersede the information contained in Tasks 4 and 9 of the district's/BOCES' approved Education Law §3012-d APPR plan.

Q7. My district/BOCES received approval of a Hardship Waiver for the 2016-17 school year but failed to submit a renewal application by February 1, 2018. How will educators' scores and ratings be calculated during the 2017-18 school year?

Hardship Waivers are approved on an annual basis. Therefore, if your district/BOCES receives approval of a Hardship Waiver for a particular school year and does not submit a renewal application for any subsequent school year by the Department's deadline, the district/BOCES must implement all of the provisions found in Tasks 4 and 9 of the most recently approved §3012-d APPR plan, including the requirement that at least one observation/school visit be conducted by impartial independent trained evaluators for all educators.

Q8. If a district/BOCES receives approval of a Hardship Waiver, are educators rated Ineffective in the prior school year the only ones who will receive observations/school visits by an impartial independent trained evaluator?

Approval of a Hardship Waiver will excuse, but not prohibit, a districts/BOCES from conducting observations/school visits by independent evaluators for educators who received an APPR rating of Highly Effective, Effective, or Developing in the preceding school year. At a minimum, districts/BOCES operating pursuant to a Hardship Waiver must ensure that educators who received an APPR rating of Ineffective in the preceding school year receive at least one observation/school visit from an impartial independent trained evaluator during the current school year. However, a district/BOCES may indicate

additional groups of educators who will also receive at least one observation/school visit by impartial independent trained evaluators.

Q9. Where can I access the Undue Burden Independent Evaluator Hardship Waiver application?

The Hardship Waiver application is accessible through the [NYSED Business Portal](#). Districts/BOCES should use the link for the SED Monitoring and Vendor Performance System to access this application. Please note that only the superintendent of a school district or the district superintendent for a BOCES will have access to this application. However, access may be delegated to other authorized employees using the instruction found in the [SEDDAS User Guide](#).

Q10. Must I receive approval of my district's Education Law §3021-d APPR plan from the Department before my district's Undue Burden Independent Evaluator Hardship Waiver application can be approved?

Yes. All districts/BOCES must submit and receive approval of their APPR plans pursuant to Education Law §3012-d before approval of a Hardship Waiver application may be granted. Once a Hardship Waiver is approved by the Department, it shall be considered part of the school district's/BOCES' APPR plan for the school year for which it is approved. Accordingly, a Hardship Waiver may not be incorporated into a district's/BOCES APPR plan until all terms of such plan are resolved through collective bargaining to the extent required and approved by the Department. Further, as Hardship Waivers are approved on an annual basis, the information contained within each district's/BOCES Waiver application will only apply during the school year for which the waiver is in effect. By contrast, the information contained in Task 4 and 9 of an approved APPR plan will continue to operate in each succeeding school year until any material changes to such plan submitted by the district/BOCES are approved by the Department. For school years in which a Hardship Waiver is active, where the terms of the Waiver are inconsistent with the approved §3012-d APPR plan, the information contained in the district's or BOCES' Hardship Waiver application will supersede the information contained in Tasks 4 and 9 of the district's/BOCES' approved Education Law §3012-d APPR plan.

Pursuant to Chapter 73 of the Laws of 2016, districts implementing an approved APPR plan consistent with Education Law §3012-c during the 2015-16 school year pursuant to an approved Hardship Waiver shall continue to be eligible to receive State aid increases for both the 2015-16 and 2016-17 school years, provided the district has fully implemented an approved APPR plan consistent with the requirements of Education Law §3012-d and the corresponding Commissioner's regulations by January 3, 2017 (because December 31st falls on a weekend, the deadline becomes January 3 pursuant to General Construction Law §25-a). Should such a district fail to have fully implemented an approved APPR plan consistent with the requirements of Education Law §3012-d and the corresponding Commissioner's regulations by January 3, 2017, such district shall not be eligible to receive State aid increases for both the 2015-16 and 2016-17 school years and shall have its monthly State aid payments reduced accordingly after March 31, 2017.

A district that fully implemented an approved APPR plan consistent with Education Law §3012-d during the 2015-16 school year shall continue to be eligible to receive State aid increases for

the 2016-17 school year, provided the district has fully implemented an approved APPR plan consistent with the requirements of Education Law §3012-d and the corresponding Commissioner's regulations for the 2016-17 school year by January 3, 2017. Should such a district fail to have fully implemented an approved APPR plan consistent with the requirements of Education Law §3012-d and the corresponding Commissioner's regulations for the 2016-17 school year by January 3, 2017, such district shall not be eligible to receive a State aid increase for the 2016-17 school year and shall have its monthly State aid payments reduced accordingly after March 31, 2017.

The Department recommends that districts submit their APPR plans as soon as practicable in order to ensure that such plans can be fully implemented and approved by January 3, 2017.